



**BILLING CODE: 4810-AM-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1083**

**[Docket No.: CFPB-2016-0028]**

**RIN 3170-AA62**

**Civil Penalty Inflation Adjustments**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing for public comment an interim final rule to adjust the civil monetary penalties within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act or the Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act).

**DATES:** This rule is effective on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2016–0028 or RIN 3170–AA62, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB–2016–0028 or RIN 3170–AA62 in the subject line of the email.

- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street NE., Washington, DC 20002.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information. **FOR FURTHER INFORMATION CONTACT:** Kristin Bateman, Counsel, Legal Division, Consumer Financial Protection Bureau, at (202) 435-7700.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Inflation Adjustment Act, as amended by the 2015 Act, requires Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016, and then by January 15 every year thereafter.<sup>1</sup> Agencies must make the initial 2016 adjustments through an interim final rulemaking published in the *Federal Register*.<sup>2</sup> Under the amended Act, any increase in a civil penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.<sup>3</sup> The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

## **II. Method of Calculation**

The Inflation Adjustment Act prescribes a specific method for calculating the inflation adjustments.<sup>4</sup> As amended by the 2015 Act, the Act provides that the maximum (and minimum, if applicable) amounts for each civil penalty must be increased by the “cost-of-living adjustment,” a term that the Act defines. For purposes of the initial adjustments that agencies must make by July 1, 2016, the “cost-of-living adjustment” is defined as the percentage increase in the Consumer Price Index between (1) October of the calendar year during which the civil penalty amount was established or adjusted under a provision of law other than the Inflation Adjustment Act and (2) October 2015. The Consumer Price Index to be used for purposes of this calculation is the Consumer Price Index for all urban consumers (CPI-U) published by the

---

<sup>1</sup> See 28 U.S.C. 2461 note.

<sup>2</sup> The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 U.S.C. 2461 note. The Bureau has chosen not to make use of this exception.

<sup>3</sup> Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

<sup>4</sup> Inflation Adjustment Act section 5, *codified at* 28 U.S.C. 2461 note.

Department of Labor.<sup>5</sup> The Office of Management and Budget (OMB) has published guidance for implementing this requirement.<sup>6</sup> OMB’s guidance memorandum provides multipliers that agencies should use to adjust penalty amounts based on the year the penalty was established or last adjusted under authority other than the Inflation Adjustment Act.

To determine the new penalty amount, the agency must apply the multiplier reflecting the “cost-of-living adjustment”<sup>7</sup> to the penalty amount as it was most recently established or adjusted under a provision of law other than the Inflation Adjustment Act. The agency must then round that amount to the nearest dollar.<sup>8</sup> The increase made by this initial adjustment may not exceed 150 percent of the penalty amount in effect on the date the 2015 Act was enacted, November 2, 2015.

### **III. Description of the Interim Final Rule**

This interim final rule establishes the inflation-adjusted maximum amounts for each civil penalty within the Bureau’s jurisdiction. The following table lists the civil penalties within the Bureau’s jurisdiction and summarizes the relevant information needed to calculate the inflation adjustments pursuant to the statutory method.

---

<sup>5</sup> U.S. Dep’t of Labor, Bureau of Labor Statistics, CPI Tables, <http://www.bls.gov/cpi/#tables>.

<sup>6</sup> Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>7</sup> The multipliers reflecting the “cost-of-living adjustment” that OMB provides are rounded to five decimal places. The Bureau has used the OMB multipliers in calculating its civil penalty adjustments.

<sup>8</sup> In rounding to the nearest dollar, the Bureau has rounded down where the digit immediately following the decimal point is less than 5 and has rounded up where the digit immediately following the decimal point is 5 or greater.

<b>Law</b>	<b>Penalty Description</b>	<b>Penalty Amount as Established or Last Adjusted Under a Provision Other than the Inflation Adjustment Act</b>	<b>Year Penalty Established or Last Adjusted Under a Provision Other than the Inflation Adjustment Act</b>	<b>Penalty Amount in Effect on November 2, 2015</b>
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	\$5,000	2010 <sup>9</sup>	\$5,000 <sup>10</sup>
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	\$25,000	2010 <sup>11</sup>	\$25,000 <sup>12</sup>
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	\$1,000,000	2010 <sup>13</sup>	\$1,000,000 <sup>14</sup>
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Per violation	\$1,000	1989 <sup>15</sup>	\$1,000 <sup>16</sup>
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Annual cap	\$1,000,000	1989 <sup>17</sup>	\$1,000,000 <sup>18</sup>
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Per failure	\$50	1990 <sup>19</sup>	\$50 <sup>20</sup>
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Annual cap	\$100,000	1990 <sup>21</sup>	\$100,000 <sup>22</sup>
Real Estate Settlement	Per failure,	\$100	1990 <sup>23</sup>	\$100 <sup>24</sup>

<sup>9</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1055(c)(2)(A), 124 Stat. 1376, 2030 (2010).

<sup>10</sup> 12 U.S.C. 5565(c)(2)(A) (2015).

<sup>11</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1055(c)(2)(B), 124 Stat. 1376, 2030 (2010).

<sup>12</sup> 12 U.S.C. 5565(c)(2)(B) (2015).

<sup>13</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1055(c)(2)(C), 124 Stat. 1376, 2030 (2010).

<sup>14</sup> 12 U.S.C. 5565(c)(2)(C) (2015).

<sup>15</sup> Department of Housing and Urban Development Reform Act, Public Law 101-235, section 111, 103 Stat. 1987, 2014 (1989).

<sup>16</sup> 15 U.S.C. 1717a(a)(2) (2015).

<sup>17</sup> Department of Housing and Urban Development Reform Act, Public Law 101-235, section 111, 103 Stat. 1987, 2014 (1989).

<sup>18</sup> 15 U.S.C. 1717a(a)(2) (2015).

<sup>19</sup> Cranston–Gonzalez National Affordable Housing Act, Public Law 101-625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

<sup>20</sup> 12 U.S.C. 2609(d)(1) (2015).

<sup>21</sup> Cranston–Gonzalez National Affordable Housing Act, Public Law 101-625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

<sup>22</sup> 12 U.S.C. 2609(d)(1) (2015).

Procedures Act, 12 U.S.C. 2609(d)(2)(A)	where intentional			
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	\$25,000	2008 <sup>25</sup>	\$25,000 <sup>26</sup>
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	\$10,000	2010 <sup>27</sup>	\$10,000 <sup>28</sup>
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	\$20,000	2010 <sup>29</sup>	\$20,000 <sup>30</sup>

The Bureau followed the procedure outlined above in part II to calculate the adjusted civil penalty amounts. In accordance with the statutory requirements and OMB guidance, the Bureau multiplied each penalty amount as established or last adjusted under a provision other than the Inflation Adjustment Act by the OMB multiplier corresponding to the appropriate year, and then rounded that amount to the nearest dollar, to calculate the new, inflation-adjusted civil penalty amount. The Bureau then confirmed that the amount by which each civil penalty increased did not exceed 150 percent of the corresponding civil penalty level in effect on November 2, 2015. None of the increases exceeded this 150-percent threshold. The following chart summarizes the results of these calculations:

---

<sup>23</sup> Cranston–Gonzalez National Affordable Housing Act, Public Law 101-625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

<sup>24</sup> 12 U.S.C. 2609(d)(2)(A) (2015).

<sup>25</sup> Housing and Economic Recovery Act of 2008, Public Law 110-289, section 1514(d)(2), 122 Stat. 2654, 2823 (2008).

<sup>26</sup> 12 U.S.C. 5113(d)(2) (2015).

<sup>27</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1472(a), 124 Stat. 1376, 2189 (2010).

<sup>28</sup> 15 U.S.C. 1639e(k)(1) (2015).

<sup>29</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1472(a), 124 Stat. 1376, 2190 (2010).

<sup>30</sup> 15 U.S.C. 1639e(k)(2) (2015).

<b>Law</b>	<b>Penalty Description</b>	<b>Penalty Amount as Established or Last Adjusted Under a Provision Other than the Inflation Adjustment Act</b>	<b>Year Penalty Established or Last Adjusted Under a Provision Other than the Inflation Adjustment Act</b>	<b>OMB “Cost-of-Living Adjustment” Multiplier</b>	<b>New Penalty Amount</b>
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	\$5,000	2010	1.08745	\$5,437
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	\$25,000	2010	1.08745	\$27,186
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	\$1,000,000	2010	1.08745	\$1,087,450
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Per violation	\$1,000	1989	1.89361	\$1,894
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2)	Annual cap	\$1,000,000	1989	1.89361	\$1,893,610
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Per failure	\$50	1990	1.78156	\$89
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1)	Annual cap	\$100,000	1990	1.78156	\$178,156
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	\$100	1990	1.78156	\$178
SAFE Act, 12 U.S.C. 5113(d)(2)	Per violation	\$25,000	2008	1.09819	\$27,455
Truth in Lending Act, 15 U.S.C. 1639e(k)(1)	First violation	\$10,000	2010	1.08745	\$10,875
Truth in Lending Act, 15 U.S.C. 1639e(k)(2)	Subsequent violations	\$20,000	2010	1.08745	\$21,749

This rule codifies these civil penalty amounts by adding new part 1083 to title 12 of the CFR and new § 1083.1 therein.

#### **IV. Legal Authority and Effective Date**

The Bureau issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>31</sup> as amended by the Debt Collection Improvement Act of 1996,<sup>32</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,<sup>33</sup> which requires the Bureau to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

The Administrative Procedure Act (APA) generally requires an agency to publish a rule at least 30 days before its effective date.<sup>34</sup> This rule satisfies that requirement.

#### **V. Request for Comment**

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule.

#### **VI. Regulatory Requirements**

##### *Notice and Comment*

Under the APA, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest.<sup>35</sup> This interim final rule adjusts the civil penalty amounts within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The amendments in this interim final rule are technical, and they merely apply the statutory method for adjusting

---

<sup>31</sup> Public Law 101-410, 104 Stat. 890 (1990).

<sup>32</sup> Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373 (1996).

<sup>33</sup> Public Law 114-74, section 701, 129 Stat. 584, 599 (2015).

<sup>34</sup> See 5 U.S.C. 553(d).

<sup>35</sup> 5 U.S.C. 553(b)(B).



civil penalty amounts. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Moreover, the statute expressly requires the Bureau to make these initial adjustments through an interim final rulemaking to be published by July 1, 2016,<sup>36</sup> and OMB's guidance confirms that agencies need not complete a notice-and-comment process before promulgating the rule.<sup>37</sup> Therefore, the amendments are adopted in final form.

#### *Regulatory Flexibility Act*

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>38</sup>

#### *Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act of 1995,<sup>39</sup> the Bureau reviewed this interim final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim final rule.

### **List of Subjects in 12 CFR Part 1083**

Administrative practice and procedure, Consumer protection, Penalties.

### **Authority and Issuance**

For the reasons set forth in the preamble, the Bureau adds part 1083 to chapter X in title 12 of the Code of Federal Regulations to read as set forth below:

### **PART 1083—CIVIL PENALTY ADJUSTMENTS**

Sec.

1083.1 Adjustments of civil penalty amounts.

---

<sup>36</sup> Inflation Adjustment Act, section 4(b)(1)(A), *codified at* 28 U.S.C. 2461 note.

<sup>37</sup> Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies 3 (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>

<sup>38</sup> 5 U.S.C. 603(a), 604(a).

<sup>39</sup> 44 U.S.C. 3506; 5 CFR 1320.

**Authority:** 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

**§ 1083.1 Adjustments of civil penalty amounts.**

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, (28 U.S.C. 2461 note) as follows:

<b>U.S. Code Citation</b>	<b>Civil Penalty Description</b>	<b>Adjusted Maximum Civil Penalty Amount</b>
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	\$5,437
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	\$27,186
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	\$1,087,450
15 U.S.C. 1717a(a)(2)	Per violation	\$1,894
15 U.S.C. 1717a(a)(2)	Annual cap	\$1,893,610
12 U.S.C. 2609(d)(1)	Per failure	\$89
12 U.S.C. 2609(d)(1)	Annual cap	\$178,156
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	\$178
12 U.S.C. 5113(d)(2)	Per violation	\$27,455
15 U.S.C. 1639e(k)(1)	First violation	\$10,875
15 U.S.C. 1639e(k)(2)	Subsequent violations	\$21,749

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, regardless of when the violation for which the penalty is assessed occurred.

Dated: June 7, 2016.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

